

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	CG Docket No. 02-278
)	
Petition for Declaratory Ruling of the Fax Ban)	
Coalition)	

COMMENTS OF ACUTA

ACUTA: The Association for Communications Technology Professionals in Higher Education (“ACUTA”)¹ respectfully submits these comments in support of the Fax Ban Coalition’s November 7, 2005 Petition for Declaratory Ruling.² ACUTA does not comment on the specific requirements of any state legislation, but rather seeks to highlight the increased need for a clear federal pronouncement on the appropriate actions states can take – consistent with the Telephone Consumer Protection Act of 1991 – to regulate intrastate fax services.³

¹ ACUTA is a non-profit association whose members include over 800 institutions of higher education within the United States. ACUTA members include both large and small non-profit institutions of higher education, ranging from institutions with several hundred students to major research and teaching institutions with greater than 25,000 students. ACUTA member representatives are responsible for managing telecommunications services for students, faculty and staff on college and university campuses.

² See Petition for Declaratory Ruling, Fax Ban Coalition, CG Docket No. 02-278 (Nov. 7, 2005) (“*Petition*”).

³ The *Petition* itself is focused, but not limited to, California state requirements that were scheduled to go into effect on January 1, 2006. A federal court issued a stay of those requirements on December 21, 2005. *Chamber of Commerce v. Lockyer*, 2:05-CV-02257-MCE-KJM (E.D. Cal. 2005). Action is warranted in this proceeding – even if the

The Fax Ban Coalition *Petition* represents only the most recent petition addressing the need for federal action to curb alleged state excesses with respect to interstate fax regulation: the Commission has sought comment three prior times in 2005 to address similar petitions.⁴ In all, over thirty states have enacted intrastate fax requirements that are more extensive than the federal rules, many of which also seemingly apply to interstate fax services.⁵

The Telephone Consumer Protection Act provides that states are entitled to adopt more “restrictive intrastate requirements or regulations.”⁶ Thus, discrete state requirements that apply to faxes that are sent from and received in the same state are within that provision. As a practical matter, colleges and universities have the ability to comply with such requirements limited to intrastate communications within the state in which they operate. In practice, however, states have adopted nominally intrastate requirements that have interstate effects, or are silent as to their jurisdictional limit.

Of particular concern are those state-specific requirements that would apply to all faxes sent from or to a state. In the course of their teaching, research and administrative

court ultimately rejects the specific California provisions at issue – given the need for greater clarity on this issue as a matter of federal policy.

⁴ See *Consumer & Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Relating to Commission's Jurisdiction Over Interstate Telemarketing*, DA 05-1346, CG Docket No. 02-278 (May 13, 2005); *Consumer & Governmental Affairs Bureau Reopens Public Comment Period for Petitions for Declaratory Ruling Relating to Preemption of State Telemarketing Laws*, DA 05-1347, CG Docket No. 02-278 (May 13, 2005); *Consumer & Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling on Preemption of California Telemarketing Rules*, DA 05-1348, CG Docket No. 02-278 (May 13, 2005).

⁵ *Petition* at Appendix C.

⁶ 47 U.S.C. § 227(e)(1).

functions, colleges and universities often communicate by fax with students, parents, alumni, researchers, faculty members, and other individuals who reside in many states. As such, a college or university doing business with entities/persons/students in fifty states is potentially subject to 50+ fax regulatory regimes. Further, given the significant variability in state requirements – with different formats, opt-out notice requirements, opt-out procedures, and established business relationship and non-profit exemptions – it is impractical, if not impossible, to comply with each state’s requirements with uniform operating procedures.

The proliferation of state fax rules, therefore, creates a substantial risk of undermining federal fax regulation and significantly increasing the costs of fax transmissions for all entities, including colleges and universities. ACUTA respectfully requests prompt Commission action to provide clear guidelines to states on the scope of intrastate regulation permissible under Section 227 of the Act, and expedited Commission action to preempt any state legislation that exceeds such authority.

Respectfully Submitted,

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